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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,594	03/04/2005	Adrian Blagg	102792-408(11089P1)	1338
27389	7590	05/12/2008		
NORRIS, MCLAUGHLIN & MARCUS			EXAMINER	
875 THIRD AVE			BOYER, CHARLES I	
18TH FLOOR				
NEW YORK, NY 10022			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			05/12/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/523,594

**Applicant(s)**

BLAGG ET AL.

**Examiner**

Charles I. Boyer

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 8-10, 12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 12-15, and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This action is responsive to applicants' amendment and response received March 3, 2008. Claims 1-5, 8-10, 12-15 and 17-20 are currently pending.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 8, 9, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Morelli, US 6,524,624.

Morelli teaches a two-part disinfecting system consisting of a first part comprising 0.32% sodium chlorite, 1% alpha olefin sulfonate, and 0.02% sodium hydroxide, and a second part comprising 5.2% lactic acid, 0.5% alkyl benzene sulfonate, and 0.5% dye, wherein the two parts are combined to yield a disinfectant composition (col. 12, example 8D). Another example consists of a first part comprising 0.64% sodium chlorite and 0.02% sodium hydroxide, and a second part comprising 2.64% lactic acid, 0.53% ethoxylated alkyl sulfonate, and 0.3% dye, wherein the two parts are combined to yield a disinfectant composition (page 8, example 2, surfactant #4). Note that one of the primary objectives of the reference is to obtain a disinfecting composition that undergoes a color change when the two parts are combined (claims 36 and 38). As this reference meets all material limitations of the claims at hand, the reference is

anticipatory. With respect to the viscosity of the final composition, as the reference teaches the same components in the same amounts as the presently claimed composition, the examiner maintains the composition will inherently have a viscosity within the presently claimed range.

Applicants have traversed this rejection on the grounds that the reference provides no teaching, or motivation in order to select specific systems of constituents, wherein a surprising increase in thickening results as compared to the viscosity of the separate precursor compositions concurrently with a rapid change in the appearance of the composition from its initial 'as-mixed' appearance to a 'post-mixed' appearance at a time interval of 5 minutes or less, or 2 minutes or less.

The examiner acknowledges that the reference is concerned with color longevity in their compositions, that is, they wish to prolong the length of time that their composition is colored to indicate its disinfecting properties are still viable. The examiner also agrees with applicants that examples 2 and 3 are meant to demonstrate the persistence of color in the compositions of the reference. However, note that all that is claimed is a "first appearance" and a "second appearance" in a period of time of less than five minutes. This language is extremely vague, and cannot be used to distinguish the present claims over the reference. Does a cloudy or turbid appearance which changes to a clearer appearance satisfy this limitation? What about the swirling of colors that doubtless takes place upon initial mixing but then settles down to a more uniform color? Even if a difference in hue alone is considered, though the reference attempts to maintain color, it does not say that no color change occurs. Indeed,

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examples 2 and 3, cited by applicants, demonstrates an immediate loss of color, albeit small (see figure 1 of the reference). Is even a small loss of color a "second appearance" as claimed? The examiner maintains that it is and so the rejection is maintained.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-10, 12-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morelli, US 6,524,624.

Morelli is relied upon as set forth above. Recall that Morelli teaches ethoxylated anionic surfactants. As ethoxylated sulfates are among the most common anionic surfactants known, the inclusion of such a surfactant, in light of the reference's teaching of ethoxylated anionics, would be an obvious choice to one of ordinary skill in the art.

Applicants have traversed this rejection for the reasons above, and the examiner's response is the same.

3. The rejection of claims 1-5, 11, and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Harrison et al, WO 98/57544 is withdrawn in view of applicants' amendment and response.

4. The rejection of claims 1-5, 11, and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Hei et al, US 6,663,902 is withdrawn in view of applicants' amendment and response.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer  
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Art Unit 1796

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